UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 0 9 2000

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Sent Via Federal Express

Mr. Joseph R. Bynam
Executive Vice President
Fossil Power Group
Tennessee Valley Authority
1101 Market Street, LP 3K
Chattanooga, TN 37402

Re: Notice of Violation - Tennessee Valley Authority

Dear Mr. Bynam:

Based upon information gathered by the United States Environmental Protection Agency (EPA), and pursuant to Section 113 of the Clean Air Act (the Act), 42 U.S.C. Section 7413, as amended, you are hereby notified that EPA has found the Tennessee Valley Authority (TVA) to be in violation of the requirements of the Act. A notice of violation is enclosed.

If you have any questions relating to this notice, please contact Angelia Souder Blackwell, Associate Regional Counsel, at (404) 562-9527.

Sincerely,

Winston A. Smith
Director
Air, Pesticides and Toxics
Management Division

Enclosure
cc: Edward Christenbury, TVA
Greg Signer, TVA
John E. Hornback, KDAQ
Barry P. Stephens, TDAPC
J. Carter S. Gray, MSCHD
Ron Gore, ADEM

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

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| IN THE MATTER OF: | Docket No. CAA-04-2000-0008 |
| Tennessee Valley Authority | **NOTICE OF VIOLATION** |
| Paradise, Colbert, Widows Creek, Allen, Cumberland, Bull Run, John Sevier, Shawnee and Kingston Plants | Clean Air Act Section 113(a)(1) 42 U.S.C. § 7413(a)(1) |
| Respondent | |

## NOTICE OF VIOLATION

This Notice of Violation ("NOV") is issued to the Tennessee Valley Authority ("TVA"), and TVA'S operators at its plants in Drakesboro and Paducah, Kentucky; Tuscumbia and Stevenson, Alabama; and Memphis, Cumberland City, Clinton, Rogersville and Kingston, Tennessee; for violations of the Clean Air Act ("the Act") at all the coal-fired power plants identified below. TVA has embarked on a program of modifications intended to extend the useful life, regain lost generating capacity and/or increase capacity at their coal-fired power plants.

Commencing at various times since [redacted] TVA has modified and operated the coal-fired power plants identified below without obtaining New Source Review ("NSR") permits authorizing the construction and operation of physical modifications of its boiler units as required by the Act. In addition, for each physical modification at these power plants, TVA has operated these modifications without installing pollution control equipment required by the Act. These violations of the Act and the State Implementation Plans ("SIP") of Tennessee, Kentucky and Alabama have resulted in the release of massive amounts of Sulfur Dioxides ($SO_2$), Nitrogen Oxides ($NO_x$), and particulate matter ("PM") into the environment. Until these violations are corrected, TVA will continue to release massive amounts of illegal $SO_2$, $NO_x$, and PM into the environment.

This NOV is issued pursuant to Section 113(a)(1) of the Act, as amended, 42 U.S.C.A. Sections 7401-7671q. Section 113(a) of

the Act requires the Administrator of the United States Environmental Protection Agency ("EPA") to notify any person in violation of a state implementation plan or permit of the violations. The authority to issue this NOV has been delegated to the Regional Administrator, EPA Region 4.

STATUTORY AND REGULATORY BACKGROUND

1. When the Act was passed, Congress exempted existing facilities from many of its requirements. However, Congress also made it quite clear that this exemption would not last forever. As the United States Court of Appeals for the D.C. Circuit explained in Alabama Power v. Costle, 636 F.2d 323 (D.C. Cir. 1979), "the statutory scheme intends to 'grandfather' existing industries; but...this is not to constitute a perpetual immunity from all standards under the PSD program." Rather, the Act requires grandfathered facilities to install modern pollution control devices whenever the unit is proposed to be modified in such a way that its emissions may increase.

2. The NSR provisions of Parts C and D of Title I of the Act require preconstruction review and permitting for modifications of stationary sources. Pursuant to applicable regulations, if a major stationary source is planning upon making a major modification, then that source must obtain either a Prevention of Significant Deterioration (PSD) permit or a nonattainment NSR permit, depending on whether the source is located in an attainment or a nonattainment area for the pollutant being increased above the significance level. If a major stationary source is planning on making a modification that is not major, it must obtain a general or "minor" NSR permit regardless of its location. To obtain the required permit, the source must agree to put on the best available control technology ("BACT") for an attainment pollutant or achieve the lowest achievable emission rate ("LAER") in a nonattainment area, or, in the case of a modification that is not major, must meet the emission limit called for under the applicable minor NSR program.

3. Pursuant to the Act, the SIP of Kentucky requires that no construction or operation of a modification of a major stationary source occur without first obtaining a permit. See for PSD permits in attainment areas, 40 C.F.R. § 52.21, and Kentucky Air Regulations 401 KAR 51:017, section 8(1-3), which is part of the Kentucky SIP, 54 Fed. Reg. 36,307 (September 1, 1989), and revised 59 Fed. Reg. 32,343 (June 23, 1994); for NSR permits in nonattainment areas, 401 KAR

51:050, which was part of the Kentucky SIP, 45 Fed. Reg. 6092 (January 25, 1980), and later revised at 401 KAR 51:052, which is part of the Kentucky SIP, 59 Fed. Reg. 32,343 (June 23, 1994); and for minor modifications regardless of attainment status, 401 KAR 50:035, which is part of the Kentucky SIP, 45 Fed. Reg. 6092 (January 25, 1980), and revised at 55 Fed. Reg. 4169 (February 7, 1990) and again at 60 Fed. Reg. 49778 (September 27, 1995).

4. Pursuant to the Act, the SIP of Alabama requires that no construction or operation of a modification of a major stationary source occur without first obtaining a permit. See for PSD permits in attainment areas, 40 C.F.R. § 51.166(i), and Alabama Department of Environmental Management Code 335-3-14-.04(8), which is part of the Alabama SIP that was approved by EPA on March 9, 1983 (48 Fed. Reg. 9860); for NSR permits in nonattainment areas, Alabama Department of Environmental Management Code 335-3-14-.05, which is part of the Alabama SIP that was approved by EPA on November 10, 1981 (46 Fed. Reg. 55518), as amended on December 28, 1987 (52 Fed. Reg. 48812); and for minor modifications regardless of attainment status, Alabama Department of Environmental Management Code 335-3-14-.01, which is part of the Alabama SIP that was approved by EPA on November 10, 1981 (46 Fed. Reg. 55518), as amended on December 28, 1987 (52 Fed. Reg. 48812).

5. Pursuant to the Act, the SIP of Tennessee requires that no construction or operation of a modification of a major stationary source occur without first obtaining a permit. See for PSD permits in attainment area, 40 C.F.R. § 51.166(i),and Tennessee Air Pollution Control Regulation 1200-3-9-.01(4), which is part of the Tennessee SIP that was approved by EPA on May 31, 1972 (37 Fed. Reg. 10840), as amended on February 26, 1985 (50 Fed. Reg. 7777), and on July 29, 1996 (61 Fed. Reg.39332); and Memphis-Shelby Air Pollution Control Regulation Article I, Division IV, Section 16-77 that was approved by EPA on June 15, 1989 (54 Fed. Reg. 25456).

For NSR permits in nonattainment areas, Tennessee Air Pollution Control Regulation 1200-3-9-.01(5), which is part of the Tennessee SIP that was approved by EPA on May 31, 1972 (37 Fed. Reg. 10840), as amended on June 7, 1979 (44 Fed. Reg. 32681), June 24, 1982 (47 Fed. Reg. 27267) and on February 10, 1995 (60 Fed. Reg. 7913); and Memphis-Shelby Air Pollution Control Regulation Article I, Division IV, Section 16-77 that was approved by EPA on June 15, 1989 (54 Fed. Reg. 25456).

For minor modifications regardless of attainment status, Tennessee Air Pollution Control Regulation 1200-3-9-.01(1), which is part of the Tennessee SIP that was approved by EPA on May 31, 1972 (37 Fed. Reg. 10840), as amended on February 26, 1985 (50 Fed. Reg. 7779), and on July 18 and 29, 1996 (61 Fed. Reg. 37387 and 39332); and Memphis-Shelby Air Pollution Control Regulation Article I, Division IV, Section 16-77 that was approved by EPA on June 15, 1989 (54 Fed. Reg. 25456).

6. The SIP provisions identified in paragraphs 3-5 above are all federally enforceable pursuant to Sections 110 and 113 of the Act.

## FACTUAL BACKGROUND

7. TVA operates the Paradise Steam Plant, a fossil fuel-fired electric utility steam generating plant located in Muhlenburg County, Drakesboro, Kentucky. The plant consists of 3 boiler units with a total generating capacity of 2558 megawatts and began operation in 1963.

8. The Paradise Plant is located in an area that has the following attainment/nonattainment classifications from 1980 to the present:

> For $NO_2$, the area has been classified as attainment from 1980 to the present;
> For $SO_2$, the area where has been classified as nonattainment from 1980 to 1998. The area has been reclassified as attainment from 1998 to the present;
> For ozone, the area has been classified as attainment from 1980 to the present;
> For Total Suspended Particulates (TSP), the area has been classified as nonattainment from 1980 to 1987.
> For PM, the area has been classified as attainment from 1987 to present.

9. TVA operates the Shawnee Steam Plant, a fossil fuel-fired electric utility steam generating plant located in McCraken County, Paducah, Kentucky. The plant consists of 10 boiler units with a total generating capacity of 1750 megawatts and began operation in 1953.

10. The Shawnee Plant is located in an area that has the following attainment/nonattainment classifications from 1980 to the present:

For $NO_2$, the area has been classified as attainment from 1980 to the present;
For $SO_2$, the area had been classified as nonattainment from 1980 to May 1982. The area has been classified as attainment from May 1982 to the present; and,
For ozone, the area has been classified as attainment from 1980 to the present.
For TSP, the area had been classified as nonattainment from 1980 to 1987. For PM, the area has been classified as attainment from 1987 to present.

11. TVA operates the Colbert Steam Plant, a fossil fuel-fired electric utility steam generating plant located in Colbert County, Tuscumbia, Alabama. The plant consists of 5 boiler units with a total generating capacity of 1350 megawatts and began operation in 1955.

12. TVA operates the Widows Creek Steam Plant, a fossil fuel-fired electric utility steam generating plant located in Jackson County, Stevenson, Alabama. The plant consists of 8 boiler units with a total generating capacity of 1968 megawatts and began operation in 1952.

13. The Colbert and Widows Creek Plants are located in areas that has the following attainment/nonattainment classifications from 1980 to the present:

For $NO_2$, Jackson and Colbert Counties have been classified as attainment from 1980 to the present;
For ozone, Jackson and Colbert Counties have been classified as attainment from 1980 to the present; and,
For $SO_2$ in Jackson County, where the Widows Creek Plant is located, the area had been classified as nonattainment from 1980 to 1990. The area has been reclassified as attainment from 1990 to the present.
For $SO_2$ in Colbert County, where the Colbert Plant is located, the area was nonattainment between 1980-1993. The area has been reclassified as attainment from 1993 to the present.
For TSP in Jackson County, where the Widows Creek Plant is located, the area had been classified as nonattainment from 1980 to 1987. For PM, the area has been classified as attainment from 1987 to present.
For TSP and PM in Colbert County, where the Colbert Plant is located, the area has been classified as as attainment from 1980 to present.

14. TVA operates the Allen Steam Plant, a fossil fuel-fired electric utility steam generating plant located in Shelby

County, Memphis, Tennessee. The plant consists of 3 boiler units with a total generating capacity of 990 megawatts and began operation in 1959.

15. The Allen Plant is located in an area that has the following attainment/nonattainment classifications from 1980 to the present:

> For $NO_2$ the area has been classified as attainment from 1980 to the present;
> For $SO_2$, the area has been classified as attainment from 1980 to the present; and,
> For ozone, the area had been classified as nonattainment between January 1980 and January 1995. The area has been classified as attainment from February 1995 to the present.
> For TSP and PM, the area has been classified as attainment from 1980 to present.

16. TVA operates the Cumberland Steam Plant, a fossil fuel-fired electric utility steam generating plant located in Stewart County, Cumberland City, Tennessee. The plant consists of 2 boiler units with a total generating capacity of 2600 megawatts and began operation in 1973.

17. TVA operates the Bull Run Steam Plant, a fossil fuel-fired electric utility steam generating plant located in Anderson County, Clinton, Tennessee. The plant consists of 1 boiler unit with a total generating capacity of 950 megawatts and began operation in 1967.

18. TVA operates the John Sevier Steam Plant, a fossil fuel-fired electric utility steam generating plant located in Hawkins County, Rogersville, Tennessee. The plant consists of 4 boiler units with a total generating capacity of 800 megawatts and began operation in 1955.

19. The Cumberland, Bull Run and John Sevier Plants are located in areas that have the following attainment/nonattainment classifications from 1980 to the present:

> For Stewart, Anderson, and Hawkins Counties :
> For $NO_2$, the area has been classified as attainment from 1980 to the present;
> For $SO_2$, the area has been classified as attainment from 1980 to the present; and,
> For ozone, the area has been classified as attainment from 1980 to the present.

For TSP in Anderson County, where the Bull Run Plant is located, the area had been classified as nonattainment from 1980 to 1982. For PM, the area has been classified as attainment from 1982 to present. For TSP and PM in Stewart and Hawkins Counties, where the Cumberland and John Sevier Plants are located, the area has been classified as attainment from 1980 to present.

20. TVA operates the Kingston Steam Plant, a fossil fuel-fired electric utility steam generating plant located in Roane County, Kingston, Tennessee. The plant consists of 9 boiler units with a total generating capacity of 1700 megawatts and began operation in 1954.

21. The Kingston plant is located in an area that has the following attainment/nonattainment classifications from 1980 to the present:

For $NO_2$, the area has been classified as attainment from 1980 to the present;
For $SO_2$, the area has been classified as attainment from 1980 to the present; and,
For ozone, the area had been classified as nonattainment from 1980 to March 1990. The area has been classified as attainment from March 1990 to the present.
For TSP and PM, the area has been classified as attainment from 1980 to the present.

22. Each of the plants identified in paragraphs 7-21 above emits or has the potential to emit at least 100 tons per year of $NO_2$, $SO_2$ and/or PM and is a stationary source under the Act.

## VIOLATIONS

### A. Kentucky Plants
### Paradise and Shawnee Plants

23. On numerous occasions between [redacted] TVA has made "modifications" to the Paradise Plant as defined by 40 C.F.R. § 52.21(b)and 401 KAR 51:017 and 401 KAR 51:050 Section 2(3), and revised at 401 KAR 51:052. These modifications include those [redacted]

24. For each of the modifications that occurred at the Paradise Plant, TVA failed to obtain a PSD permit pursuant to 40

C.F.R. 52.21(i)and 401 KAR 51:017 from 1989 to present; a nonattainment NSR permit pursuant to 401 KAR 51:050 and 51:052, or a minor NSR permit pursuant to Kentucky Air Regulations 401 KAR 50:035, Section 3. In addition, for modifications after 1992, no information was provided to the permitting agency of actual emission after the modification as required by 40 C.F.R. § 52.21(b)(21)(v) and 401 KAR 51:050, and later revised at 401 KAR 51:052.

25. On numerous occasions between [redacted] TVA has made "modifications" to the Shawnee Plant as defined by 401 KAR 51:017 Section 1(23). These modifications include [redacted]

26. For each of the modifications that occurred at the Shawnee Plant, TVA failed to obtain a PSD permit pursuant to 401 KAR 51:017 or a minor NSR permit pursuant to Kentucky Air Regulations 401 KAR 50:035, Section 3. In addition, for modifications after 1992, no information was provided to the permitting agency of actual emission after the modification as required by 40 C.F.R. § 52.21(b)(21)(v)and 401 KAR 51:017.

27. None of these modifications fall within the "routine maintenance, repair and replacement" exemption found at 40 C.F.R. § 52.21(b)(2)(iii) and 401 KAR 51:017 Section 1(23) and 401 KAR 51:050, later revised at 401 KAR 51:052. Each of these changes was an expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life. In each instance, the change was performed to increase capacity, regain lost capacity, and/or extend the life of the unit. In many instances, the original component was replaced with a component that was substantially redesigned in a manner that increased emissions. That the "routine maintenance, repair and replacement" exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld by the court of appeals in 1990. Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).

28. None of these modifications fall within the "increase in hours of operation or in the production rate" exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(f), or 401 KAR 51:017,

Section 1(23)(5) and 401 KAR 51:050 Section 2. This exemption is limited to stand-alone increases in operating hours or production rates, not where such increases follow or are otherwise linked to construction activity. That the hours of operation/rates of production exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld twice by the court of appeals, in 1989 and in 1990. Puerto Rican Cement Co. v. EPA, 889 F.2d 292 (1st Cir. 1989); Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).

29. None of the modifications fall within the "demand growth" exemption found at 40 C.F.R. Section 52.21(b)(33)(ii) or Kentucky Air Regulations 401 KAR 51:050, and revised at 401 KAR 51:052, because for each modification a physical change was performed which resulted in the emissions increase.

30. Each of these modifications at the Paradise and Shawnee Plants resulted in a net significant increase in emissions, as that term is defined at Kentucky Air Regulations 401 KAR 51:017, Section 1(23) and 401 KAR 51:050, later revised at 401 KAR 51:052, for $NO_2$, and $SO_2$ and/or PM.

31. Therefore, TVA violated and continues to violate 40 C.F.R. Section 52.21 and Kentucky SIP Rule Kentucky Air Regulations 401 KAR 51:017 for the prevention of significant deterioration; Kentucky Air Regulations 401 KAR 51:050, for preconstruction review for nonattainment areas; and/or Kentucky Air Regulations 401 KAR 51:052 by constructing and operating modifications at the Paradise and Shawnee plants without the necessary permit required by the Kentucky SIP.

32. Each of these violations exists from the date of start of construction of the modification until the time that TVA obtains the appropriate NSR permit and operates the necessary pollution control equipment to satisfy the Kentucky SIP.

B. Alabama Power Plants
Colbert and Widows Creek Plants

33. On numerous occasions between [redacted] TVA has made "modifications" at the Colbert Plant as defined by the Alabama SIP, Alabama Department of Environmental Management (ADEM) Code 335-3-14-.04(2)(b)(1).

These modifications include [redacted]

34. For each of the modifications that occurred at the Colbert Plant, TVA did not obtain a PSD permit pursuant to ADEM Code 335-3-14-.04, a nonattainment NSR permit pursuant to ADEM Code 335-3-14-.05, nor a minor NSR permit pursuant to ADEM Code 335-3-14-.01. In addition, for modifications after 1992, no information was provided to the permitting agency of actual emission after a modification as required by ADEM Code 335-3-14-.03.

35. On numerous occasions between 1979 and the date of this Notice, TVA made "modifications" of the Widows Creek Plant as defined by the Alabama SIP, ADEM Code 335-3-14-.04(2)(b)(1). These modifications included, but are not limited to, replacement of elements in the secondary and reheater superheaters and crossovers in Unit 5 in 1989.

36. For each of these modifications that occurred at the Widows Creek Plant, TVA did not obtain a PSD permit pursuant to ADEM Code 335-3-14-.04, a nonattainment NSR permit pursuant to ADEM Code 335-3-14-.05, nor a minor NSR permit pursuant to ADEM Code 335-3-14-.01. In addition, for modifications after 1992, no information was provided to the permitting agency of actual emissions after the modification as required by ADEM Code 335-3-14-.03.

37. The modifications at the Colbert and Widows Creek plants do not fall within the "routine maintenance, repair and replacement" exemption found at 40 C.F.R. § 52.21(b)(2)(iii), or ADEM Code 335-3-14-.04(8). Each of these changes was an expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life. In each instance, the change was performed to increase capacity, regain lost capacity, and/or extend the life of the unit. In many instances, the original component was replaced with a component that was substantially redesigned in a manner that increased emissions. That the "routine maintenance, repair and replacement" exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld by the court of appeals in 1990. Wisconsin

Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).

38. None of these modifications fall within the "increase in hours of operation or in the production rate" exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(f), or ADEM Code 335-3-14-.04(8). This exemption is limited to stand-alone increases in operating hours or production rates, not where such increases follow or are otherwise linked to construction activity. That the hours of operation/rates of production exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld twice by the court of appeals, in 1989 and in 1990. Puerto Rican Cement Co. v. EPA, 889 F.2d 292 (1st Cir. 1989); Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).

39. None of the modifications fall within the "demand growth" exemption found at 40 C.F.R. Section 52.21(b)(33)(ii) or ADEM Code 335-3-14-.03 because for each modification a physical change was performed which resulted in the emissions increase.

40. Each of the modifications at the Colbert and Widows Creek plants resulted in a net significant increase in emissions, as that term is defined in ADEM Code 335-3-14-.04(2)(w), for $NO_2$, $SO_2$ and/or PM.

41. Therefore, TVA violated and continues to violate 40 C.F.R. Section 52.21 and Alabama SIP Rule 335-3-14-04 for the prevention of significant deterioration; 40 C.F.R. Section 52.24 and Rule 335-3-14-.05 for preconstruction review for nonattainment areas; and/or Rule 335-3-14-.03 by constructing and operating modifications at the Colbert and Widows Creek plants without the necessary permit required by the Alabama SIP.

42. Each of these violations exists from the date of start of construction of the modification until the time that TVA obtains the appropriate NSR permit and operates the necessary pollution control equipment to satisfy the Alabama SIP.

C. Tennessee Plants

Allen, Cumberland, Bull Run, John Sevier and Kingston Plants

43. On numerous occasions [redacted] TVA has made "modifications" of the Allen Steam

Plant as defined by the Tennessee SIP, Tennessee Air Pollution Control Regulation and Memphis- Shelby Air Pollution Control Regulation at 1200-3-9-.01(4)(b)2. [redacted]

44. For each of the modifications that occurred at the Allen Plant, TVA did not obtain a PSD permit pursuant to Tennessee Air Pollution Control Regulations and Memphis-Shelby Air Pollution Control Regulations at 1200-3-9-.01(4), a nonattainment NSR permit pursuant to Tennessee Air Pollution Control Regulations and Memphis-Shelby Air Pollution Control Regulations at 1200-3-9-.01(5), nor a minor NSR permit pursuant to Tennessee Air Pollution Control Regulations and Memphis-Shelby Air Pollution Control Regulations at 1200-3-9-.01(1). In addition, for modifications after 1992 no information was provided to the permitting agency of actual emission after a modification as required by Tennessee Air Pollution Control Regulations and Memphis-Shelby Air Pollution Control Regulations at 1200-3-9-.01.

45. On numerous occasions between [redacted] TVA made "modifications" of the Cumberland Plant as defined by the Tennessee SIP, Tennessee Air Pollution Control Regulation 1200-3-9-.01(4)(b)2. These modifications included, but are not limited to, [redacted]

46. For each of the modifications that occurred at the Cumberland Plant, TVA did not obtain a PSD permit pursuant to Tennessee Air Pollution Control Regulations 1200-3-9-.01(4)nor a minor NSR permit pursuant to Tennessee Air Pollution Control Regulations 1200-3-9-.01(1). In addition, for modifications after 1992 no information was provided to the permitting agency of actual emission after a modification as required by Tennessee Air Pollution Control Regulations 1200-3-9-.01.

47. On numerous occasions [redacted] TVA made "modifications" of the Bull Run Plant as defined by the Tennessee SIP, Tennessee Air Pollution Control Regulation 1200-3-9-.01(4)(b)2. These modifications included, but are not limited to, [redacted]

48. For each of the modifications that occurred at the Bull Run Plant, TVA did not obtain a PSD permit pursuant to Tennessee Air Pollution Control Regulations 1200-3-9-.01(4) nor a minor NSR permit pursuant to Tennessee Air Pollution Control Regulations 1200-3-9-.01(1). In addition, for modifications after 1992 no information was provided to the permitting agency of actual emission after a modification as required by Tennessee Air Pollution Control Regulations 1200-3-9-.01.

49. On numerous occasions between [redacted] TVA made "modifications" of the John Sevier Plant as defined by the Tennessee SIP, Tennessee Air Pollution Control Regulation 1200-3-9-.01(4)(b)2. These modifications included, but are not limited to, [redacted]

50. For each of the modifications that occurred at the John Sevier Plant, TVA did not obtain a PSD permit pursuant to Tennessee Air Pollution Control Regulations 1200-3-9-.01(4), nor a minor NSR permit pursuant to Tennessee Air Pollution Control Regulations 1200-3-9-.01(1). In addition, for modifications after 1992 no information was provided to the permitting agency of actual emission after a modification as required by Tennessee Air Pollution Control Regulations 1200-3-9-.01.

51. On numerous occasions between [redacted] TVA made "modifications" of the Kingston Plant Unit as defined by the Tennessee SIP, Tennessee Air Pollution Control Regulation 1200-3-9-.01(4)(b)2. These modifications included, [redacted]

52. For each of the modifications that occurred at the Kingston, TVA did not obtain a PSD permit pursuant to Tennessee Air Pollution Control Regulations 1200-3-9-.01(4), a nonattainment NSR permit pursuant to Tennessee Air Pollution Control Regulations 1200-3-9-.01(5), nor a minor NSR permit pursuant to Tennessee Air Pollution Control Regulations 1200-3-9-.01(1). In addition, for modifications after 1992 no information was provided to the permitting agency of actual emission after a modification as required by

Tennessee Air Pollution Control Regulations 1200-3-9-.01.

53. The modifications at the Allen, Cumberland, Bull Run, John Sevier, and Kingston plants do not fall within the "routine maintenance, repair and replacement" exemption found at 40 C.F.R. § 52.21(b)(2)(iii), or Tennessee Air Pollution Control Regulations 1200-3-9-.01(4)(b)(2)(i)(I). Each of these changes was an expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life. In each instance, the change was performed to increase capacity, regain lost capacity, and/or extend the life of the unit. In many instances, the original component was replaced with a component that was substantially redesigned in a manner that increased emissions. That the "routine maintenance, repair and replacement" exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld by the court of appeals in 1990. Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).

54. None of these modifications fall within the "increase in hours of operation or in the production rate" exemption found at 40 C.F.R. § 52.21(b)(2)(iii)(f), or Tennessee Air Pollution Control Regulations 1200-3-9-.01(4)(b)(2)(i)(VI). This exemption is limited to stand-alone increases in operating hours or production rates, not where such increases follow or are otherwise linked to construction activity. That the hours of operation/rates of production exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld twice by the court of appeals, in 1989 and in 1990. Puerto Rican Cement Co. v. EPA, 889 F.2d 292 (1st Cir. 1989); Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).

55. Each of the modifications at the Allen, Cumberland, Bull Run, John Sevier and Kingston plants resulted in a net significant increase in emissions, as that term is defined in Tennessee Air Pollution Control Regulations 1200-3-9-.01(4)(b)(4), for $NO_2$, $SO_2$ and/or PM.

56. Therefore, TVA violated and continues to violate 40 C.F.R.

Section 52.21 and Tennessee SIP Rule 1200-3-9-.01(4) for the prevention of significant deterioration; 40 C.F.R. Section 52.24 and Rule 1200-3-9-.01(5) for preconstruction review for nonattainment areas; and/or Rule 1200-3-9-.01(1) by constructing and operating modifications at the Allen, Cumberland, Bull Run, John Sevier and Kingston plants without the necessary permit required by the Tennessee SIP.

57. Each of these violations exists from the date of start of construction of the modification until the time that TVA obtains the appropriate NSR permit and operates the necessary pollution control equipment to satisfy the Tennessee SIP.

## ENFORCEMENT

Section 113(a)(1) of the Act provides that at any time after the expiration of 30 days following the date of the issuance of this NOV, the Regional Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than $25,000 per day for each violation on or before January 30, 1997, and no more than $27,500 per day for each violation after January 30, 1997.

## OPPORTUNITY FOR CONFERENCE

Respondent may, upon request, confer with EPA. The conference will enable Respondent to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. Respondent has the right to be represented by counsel. A request for a conference must be made within 10 days of receipt of this Notice, and the request for a conference or other inquiries concerning the NOV should be made in writing to:

Angelia Souder Blackwell
Associate Regional Counsel
Environmental Accountability Division
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
404-562-9527

By offering the opportunity for a conference or participating in one, EPA does not waive or limit its right to

any remedy available under the Act.

Effective Date

This Notice shall become effective immediately upon issuance.

March 9, 2000
Issuance Date

Winston A. Smith
Director
Air, Pesticides & Toxics
Management Division
EPA Region 4